REMARKS/ARGUMENTS

1.   Summary of the Office Action

Claims 1-6, 8, 15-20, 22 and 23 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,832,222 (hereinafter Dziadosz) in view of U.S. Publication No. 2002/0004852 (hereinafter Sadovsky).

Claims 7 and 21 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dziadosz in view of Sadovsky and further in view of U.S. Publication No. 2002/00059425 (hereinafter Belfiore).

2.   Response to 35 U.S.C. § 103 Rejections

Claims 1-6, 8, 15-20, 22 and 23 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable Dziadosz in view of Sadovsky. To establish a prima facie case of obviousness, however, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, there has been no showing of the required motivation for the suggested combination, nor has there been any showing of a reasonable expectation of success. Consequently, the conclusion of obviousness is fatally flawed and the rejections should be removed.

Dziadosz teaches a data replication architecture that enables transparent replication of data or state information over a network of geographically dispersed processing units. However, Dziadosz does not teach the presently claimed feature of "communicating an *asynchronous event* information from the at least one designated device to the kernel of the operating system;"

(Claim 1; emphasis added). Indeed, the Office Action asserts on Page 3 that Dziadosz fails to teach such a feature (Office Action, Page 3).

To cure the deficiencies of Dziadosz, the Office Action cites Sadovsky and claims that Sadovsky teaches communicating asynchronous event information. In particular, the Office Action relies on paragraphs [0033] and [0045] of Sadovsky to teach the presently claimed feature of "communicating asynchronous event information". In addition, the Office Action suggests that it would have been obvious to one of ordinary skill in the art to combine the teachings of these references. This conclusion finds no support in the reference. Indeed, the Office Action cites no motivation for such a combination, other than a general desire to provide an improve system. This rote invocation of a general desired to make existing technologies better is an insufficient basis for reaching a conclusion of obviousness. Instead, what is needed is an actual showing of motivation to make the desired combination.

In this case, each of the references themselves provides what appears to be a complete solution. Neither of the references suggests that additional steps are needed to improve the system beyond the techniques disclosed therein. For example, Dziadosz provides a transparent data replication system over a geographically dispersed computer network that is useful in applications such as parallel computing and disaster recovery (Dziadosz, Abstract). For his part, Sadovsky presents a simplified device driver that is less complicated than a regular device driver to handle various driver interface functions required by the operating system (Sadovsky, [0006]). Nothing in these disclosures would suggest that any combination of these processes is desired. Consequently, there exists no motivation for the recited combination.

In addition, there has been no showing that one would (or even could) expect success in combining the teachings of the references. Dziadosz is concerned with a transparent data replication system using multiple storage devices. Sadovsky, on the other hand, is concerned with a simplified device driver for image acquisition devices. Nothing in the references (nor in the Office Action) suggests how the technique could be adapted to operate in an environment, such as described by Dziadosz, which relates to storage devices. Consequently, there has been no showing of an expectation of success resulting from the combination of these references.

Rather than making out a proper prima facie case of obviousness then, it appears the teachings of the present application have been used as a blueprint to gather together and

assemble various components of the prior art in the manner contemplated by the present applicants. This is a classic example of the use of hindsight reconstruction, and cannot properly be used as grounds for rejecting the present claims. Indeed, the U.S. Court of Appeals for the Federal Circuit has rejected such applications of hindsight by specifically indicating that when an obviousness rejection is made based upon a combination of references, an examiner "must show reasons that the skilled artisan, confronted with the same problems as the inventor *and with no knowledge of the claimed invention*, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (emphasis added). Merely indicating, as in the present Office Action, that the claimed invention would be obvious to one of ordinary skill in the art based on the combination of the references in inadequate. *Id.*

As demonstrated above, the present Office Action deconstructs the subject matter of the claims into its constituent components, states where each such component may be found in one of the cited references, and then concludes that it would have been obvious to combine the references to arrive at the claimed invention. This bare bones analysis is not sufficient to support the present rejections. The burden is on the Examiner to show *why* one would be so motivated as to come up with the combination. *Rouffet* at 1357-1358 ("If such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields the [Patent Office] could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.") Accordingly, the present rejections should be removed.

Claims 7 and 21 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dziadosz in view of Sadovsky and further in view of Belfiore. As established above, it should be apparent that claims 7 and 21 are patentable over the combination of Dziadosz and Sadovsky. Even Belfiore fails to cure this deficiency. Belfiore describes a method for using data structures that follow a schema in which the meaning of the communicated data is implied by the schema (Belfiore, Abstract). However, Belfiore does not teach or even suggest "communicating an *asynchronous event* information from the at least one designated device to the kernel of the

operating system" (Claim 1). Accordingly, even if Belfiore does discuss the use of subscription request, such teachings are irrelevant because the claims are patentable for other reasons.

3. Conclusion

Having tendered the above remarks and amended the claims as indicated herein, the Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Jaina Chua at (408) 947-8200.

Respectfully submitted,

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Dated: July 22, 2005

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